DIARY FOR AUGUST.

1. Sat. ..*Lammas.*
2. SUN..*8th Sunday after Trinity.*
9. SUN..*9th Sunday after Trinity.*
12. Wed..Last day for service for County Court.
14. Frid..Last day for Co. Clerks to certify County Rates to Municipalities in Counties.
16. SUN..*10th Sunday after Trinity.*
21. Frid..Long Vacation ends.
22. Sat. ..Declare for County Court.
23. SUN..*11th Sunday after Trinity.*
24. Mon..*St. Bartholomew.*
26. Wed..Appeals from Chancery Chambers.
30. SUN..*12th Sunday after Trinity.*
31. Mon..Last day for Notice of Trial for Co. Court. Last day for setting down for rehearing.

The Local Courts'

AND

MUNICIPAL GAZETTE.

AUGUST, 1868.

CAUSE OF ACTION IN DIVISION COURTS, WHERE IT ARISES.

The principles governing cases in which questions arise as to the proper court wherein to institute proceedings in Division Courts, though still presenting many points of difficulty, are gradually becoming settled. To one branch of the subject we desire now to refer.

Sec. 71 of the Division Courts Act enacts that any suit may be entered and tried in the court holden for the division in which the cause of action arose or in which the defendant or any one of several defendants resides or carries on business at the time the action is brought, notwithstanding that the defendant or defendants may at such time reside in a county or division or counties or divisions different from the one in which the cause of action arose.

The words "in which the *cause of action* arose" are, it will be seen, deserving of special attention, as numerous cases turn upon the construction to be placed upon the words here printed in italic; and it is a late decision upon this part of the section which has called our attention to the subject. The words "cause of action" have been held in many cases to mean the *whole cause of action*, or, as Chief Justice Draper, in referring to them, says, "whatever the plaintiff must prove to entitle him to recover . . . . not the contract only, but the contract and the breach."

The facts of the case referred to and lately decided in Chambers (*Carsley* v. *Fisken et al.*), by Mr. Justice Morrison, on an application for a writ of prohibition, were as follows:

The defendants, who resided and carried on business at Toronto, offered by letter written at Toronto, to sell to the plaintiff, who resided and carried on business at Kingston, a quantity of coal oil at a certain price. The plaintiff at Kingston accepted the offer of the defendants by telegraph to them at Toronto, and they thereupon shipped the oil to him at Kingston. Upon its arrival, however, the plaintiff found, as he alleged, that the quantity of oil stated to have been contained in the barrels ran short, and he then sued defendants in the Division Court at Kingston for the shortage.

It was objected at the trial that the action could not be brought at Kingston, on the ground that the cause of action did not arise there within the meaning of the statute, and that it could therefore only properly be brought where the defendants resided, under the further provision of the statute.

An application was made in Chambers for a prohibition which was eventually granted, thus deciding that in such a case as we have referred to, the action must be brought where the defendant resided.

Mr. Justice Morrison, in giving judgment, referred to the decision of the Chief Justice, held that the cause of action within the sec. 71 of the Act, is not the contract only, but the contract and breach, and for which the plaintiff claimed damages. "The sale of the oil in this case took place where the defendants resided, at Toronto, to be delivered to the plaintiff at Kingston, and the breach was, that the full quantity of oil was not delivered to the plaintiff at Kingston, the barrels being short of measure On the authority of the case cited, the cause of action arose partly at Toronto and partly at Kingston, and the plaintiff must therefore sue the defendants in the Division Court of the Division in which they reside, that is at Toronto."

JUDICIAL FORM OF EXPRESSION.

There is much sound sense in the following observations of the late Chief Justice of the Supreme Court of the State of Georgia—delivered by him on refusing an application for a new trial made on behalf of a man who had been convicted of murder:—